

<p style="text-align: right;">21</p> <p>1 have been involved in. So at least -- there may</p> <p>2 have been other others, but I'm not aware of it.</p> <p>3 Q Now, tell me a little about what type of</p> <p>4 practice do you have. What is your area of</p> <p>5 expertise, and does any of it relate to chartering</p> <p>6 of vessels?</p> <p>7 A Actually, it -- not of this type, but a</p> <p>8 lot of the work we do is in the area of</p> <p>9 transportation.</p> <p>10 Q Right.</p> <p>11 A We -- and a lot of -- the firm generally</p> <p>12 represents people in the maritime business, in the</p> <p>13 logistics business, in some of the aviation business</p> <p>14 and kind of related businesses, as well as some</p> <p>15 other industries. Most of my time is spent dealing</p> <p>16 with clients in the, in the maritime area in a kind</p> <p>17 of a general sense. So that might include people in</p> <p>18 the shipping business, freight shipping, dredging or</p> <p>19 towage or offshore activities.</p> <p>20 Q Now, when you say that, do you mean in the</p> <p>21 context of regulatory law or some other type of law?</p> <p>22 A It's regulatory, antitrust, contractual</p>	<p style="text-align: right;">23</p> <p>1 Q I guess the question was tell me as best</p> <p>2 you can recall what you did -- what time was this</p> <p>3 trip during September 16th, 2001?</p> <p>4 A It was mid --</p> <p>5 MR. CHAKRABARTY: Just a clarification as</p> <p>6 to time, talking time of year, time of day?</p> <p>7 MR. SKEEN: Time of day. I'm trying to</p> <p>8 get --</p> <p>9 A It was mid morning. I think it was called</p> <p>10 for 10:00 or so. I don't recall the precise time.</p> <p>11 But I drove out to the location, which was someplace</p> <p>12 in Annapolis. I don't recall the -- we had</p> <p>13 directions where it was. And everybody got</p> <p>14 together, and when we were all there -- we weren't</p> <p>15 sure entirely who was going to show up, one never is</p> <p>16 on these outings -- and we boarded the IMAGINE, and</p> <p>17 they sailed away from the dock. And we were going</p> <p>18 on a, kind of a round trip I guess it is to the Bay</p> <p>19 Bridge I think it was, to wherever it was. It was,</p> <p>20 let's say a couple of hours out, a couple of hours</p> <p>21 back --</p> <p>22 Q Okay.</p>
<p style="text-align: right;">22</p> <p>1 and commercial issues, and some transactional and</p> <p>2 financing work.</p> <p>3 Q And does that involve you in courtroom</p> <p>4 work or a trial practice at all?</p> <p>5 A No, not really. Very, very rarely.</p> <p>6 Q Are you what is referred to as a</p> <p>7 transactional lawyer more so or --</p> <p>8 A Yeah, I think -- I mean in terms of</p> <p>9 whether it's the regulatory work or the, I'll call</p> <p>10 it the more commercial, corporate-type work. It</p> <p>11 really doesn't require me to be in a courtroom or --</p> <p>12 it's not a litigation -- you know, we do litigation</p> <p>13 occasionally, but I'm really infrequently involved</p> <p>14 in litigation matters.</p> <p>15 Q Okay. Tell me as best you can recall what</p> <p>16 happened on the day that this took place, September</p> <p>17 of 2001.</p> <p>18 MR. CHAKRABARTY: Sorry, before we go on,</p> <p>19 I do have a copy -- can we get copies made of this?</p> <p>20 MR. SKEEN: Sure.</p> <p>21 (Interruption.)</p> <p>22 BY MR. SKEEN:</p>	<p style="text-align: right;">24</p> <p>1 A -- to terminate, I guess 2:00, 3:00,</p> <p>2 something like that.</p> <p>3 And the idea was that we would have some</p> <p>4 time together. There would be food and refreshments</p> <p>5 and spend some time together in a relaxed</p> <p>6 environment, which it was. And we were fortunate to</p> <p>7 have the nice weather. I recall it was kind of a</p> <p>8 sunny day and not too blistering hot. It was</p> <p>9 reasonably warm, but not oppressive and really -- we</p> <p>10 kind of milled around the boat as it was sailing</p> <p>11 along.</p> <p>12 There were a number of people who were in</p> <p>13 the, the cockpit area of the boat that were with,</p> <p>14 where the Captain was, and I was, I did not actually</p> <p>15 go into the cockpit as I recall. I was sitting on</p> <p>16 the roof of the galley with a number of other</p> <p>17 people, just kind of enjoying the day and talking.</p> <p>18 And at some point after we left the pier, they</p> <p>19 announced that there was food and refreshments</p> <p>20 available downstairs, and people went down and took</p> <p>21 whatever they wanted as they, as they chose to do</p> <p>22 so. At -- I -- I think it was after we were</p>

<p style="text-align: right;">25</p> <p>1 returning from the Bridge, on our way back, it was, 2 you know, a little more than halfway through the 3 trip because we still had a bit of sailing until we 4 got back, I went down into the galley to get 5 something to eat, something to drink, and was down 6 there. And I may have, as I recall I may have used 7 the facilities down there and -- the sanitary 8 facilities and then turned -- 9 MR. BOUSE: The head. 10 THE WITNESS: The head, right. I should 11 use the official maritime parlance. Thank you. 12 A And got a sandwich and something to drink 13 and came up the steps and kind of came above the 14 deck. And my recollection was that I was either 15 just before or just after getting on the deck, but I 16 think it may have been just after I had both feet on 17 the deck and I was kind of facing towards my right, 18 which was facing toward the rear, towards the rear 19 of the vessel, there was a loud explosion-type sound 20 off to my left. And that's basically the incident 21 that we're talking about here. 22 Q Okay. Do you recall when you arrived at</p>	<p style="text-align: right;">27</p> <p>1 something like that. 2 Q And you say you mainly sat on top of the 3 galley? 4 A I got, you know, something to eat, talked, 5 I think, you know, just socialized, yeah. You mean 6 where -- it's not a huge boat, and we had fifteen or 7 twenty people aboard, plus the crew, so you couldn't 8 really run around too much. And it was basically 9 just the deck and the galley that you could move 10 about in. And so that's really, the whole point was 11 to look at the Bay and enjoy the, the weather and 12 socialize. 13 Q Was there anybody on a microphone pointing 14 out -- 15 A No. 16 Q -- things of interest during the trip or 17 anything like that? 18 A I -- there -- if there was a microphone 19 used, I don't recall it. 20 Q Okay. I'm going to show you a list that's 21 been provided by your counsel entitled Persons 22 Aboard IMAGINE September 16, 2001. Are you familiar</p>
<p style="text-align: right;">26</p> <p>1 the location to embark on the trip, was there any 2 discussion, anybody in charge of the boat say 3 anything to the crew prior to boarding? 4 A My recollection was that the fellow who 5 was the Captain welcomed us. I think he said 6 something about life preservers, but that's -- it 7 was a fairly short -- and I could be wrong on that, 8 but I seem to think somebody said something about 9 life preservers, where they were stowed or something 10 like that, and talked about the, you know, where 11 we'd be going and welcomed everybody on board. 12 That's about as much as I recall. 13 Q How many crew members do you recall 14 seeing? 15 A I recall that there were -- I can't say 16 for sure if there were two or three, but I recall 17 two young women who were crew members, plus the 18 Captain. There may have been a third, I just don't 19 recall for sure. 20 Q Okay. On the trip out to the Bridge, you 21 think that was about a couple of hours trip? 22 A I guess an hour and a half, two hours,</p>	<p style="text-align: right;">28</p> <p>1 with that list? Have you seen that before? 2 A Yes. 3 Q Now, can we just go quickly down this list 4 and if you can identify for me in some general way 5 who these individuals are. 6 A Okay. Shall I proceed? 7 Q Yes. 8 A Okay. Jeff -- I'll just go in the order 9 that they're here, which is not any particular 10 order. Jeff Pike is a partner in the firm. Earl 11 Comstock is a partner in the firm. Ann Comstock is 12 his wife she's not employed by the firm. 13 Q Okay. 14 A John Butler is a partner in the firm. His 15 wife Amanda was there, but she's not employed by the 16 firm. Mason Butler is their infant, their baby. 17 Lisa Henshaw is the office manager of Sher and 18 Blackwell. Brian Henshaw and Joe Henshaw are her 19 teenage sons. Paulie Richardson is the fellow who 20 handles our back office, copying and storeroom, 21 paper supplies, things like that. Nina Scott, I 22 believe was his girlfriend. Heather Spring is an</p>

<p style="text-align: right;">29</p> <p>1 associate with the firm. Chris Diana is her 2 boyfriend, not an employee of the firm. Mark Atwood 3 is a partner in the firm. Ginny Atwood and 4 Christopher Atwood are Mark's children. Donald 5 Kassilke is an associate in the firm, and Deborah 6 Kassilke is his wife who is not an employee of the 7 firm. 8 Q Okay. Now, did any of these individuals 9 participate, or was anyone invited to participate -- 10 A You know -- 11 Q I'm sorry. 12 A I would just add that I think there's one 13 name missing on this list -- 14 Q Okay. 15 A -- and that would be Marc Fink who was the 16 fellow I mentioned who was managing partner. And 17 I -- my recollection is Mark came by himself -- 18 Q All right. 19 A -- as did I. 20 Q Were you or anyone in this group invited 21 to participate in any way with the operation of the 22 sailboat?</p>	<p style="text-align: right;">31</p> <p>1 Q -- I'm going to try to have you mark on 2 here the areas where -- 3 MR. CHAKRABARTY: Just having seen it for 4 the first time, if we could just have a few seconds 5 to -- 6 MR. SKEEN: Absolutely. Take your time. 7 A I guess I don't know what some of these 8 things are. Well, on some of the diagrams on this, 9 on the vessel. 10 MR. CHAKRABARTY: Would you like a few 11 minutes? You want to just talk about it outside, 12 then we can go back on the record -- 13 THE WITNESS: Yeah. 14 BY MR. SKEEN: 15 Q Well, let me do this. 16 MR. CHAKRABARTY: Okay. 17 Q Let me show you some photographs that you 18 have provided to us, and let's identify them as -- 19 well, maybe that will be of some assistance to you. 20 These are pictures that were provided by your 21 attorney in discovery. Can you identify -- I mean 22 first of all, have you seen those pictures before?</p>
<p style="text-align: right;">30</p> <p>1 A My recollection was that the Captain 2 allowed some of the guests on board to, you know, 3 hold the steering wheel of the vessel. I think some 4 of the kids may have done it also, may have held the 5 steering wheel of the vessel. I'm not sure about 6 that, but I seem to think it was part of the, you 7 know, experience that, for the kids, would have been 8 a fun part of the trip for them. But I believe 9 other than his turning over the steering wheel to 10 several people -- and my recollection was Jeff Pike 11 and Earl Comstock may have done it, maybe a couple 12 of the kids, perhaps Lisa's children and maybe Mark, 13 one of, one of Mark Atwood's kids may have gone 14 forward during the course of the voyage. There may 15 have been others, but I don't recall. 16 Q I'm going to show you what has been 17 provided by Mr. Bouse's client, which is, represents 18 a, to be some plans of the vessel that you were on. 19 Take a minute to orient yourself, and what I'm going 20 to try to do -- 21 MR. BOUSE: We just got these. 22 MR. CHAKRABARTY: I was -- I haven't --</p>	<p style="text-align: right;">32</p> <p>1 A I've not seen -- I've seen the photos, 2 yes. 3 Q The photos, of course. 4 MR. SKEEN: Do you have the originals of 5 these? 6 MR. CHAKRABARTY: I do, but were you going 7 to introduce them as exhibits or just use them? 8 MR. SKEEN: No, number one so I can see 9 them, and number two, so the witness can -- 10 MR. BOUSE: While we're on the record, 11 just let me request that you make copies of those, 12 not photostatic copies, at our expense, I'm not 13 asking you to pay for them, if you could have 14 somebody send them over to the copy people and just 15 make a copy of them. 16 MR. CHAKRABARTY: Sure. 17 MR. SKEEN: Are these actual photos of the 18 trip -- 19 MR. CHAKRABARTY: Correct. 20 MR. SKEEN: -- we're looking at? 21 THE WITNESS: Yes. 22 MR. SKEEN: So it was a nice day.</p>

33

1 THE WITNESS: We were lucky in that
2 respect.
3 MR. CHAKRABARTY: Referring to these
4 photos, I apologize --
5 MR. SKEEN: We want copies of both of
6 them. That would be great.
7 MR. CHAKRABARTY: You didn't get copies of
8 the others ones?
9 MR. BOUSE: No, we did not get copies of
10 those.
11 MR. CHAKRABARTY: Okay. Well --
12 MR. SKEEN: All right. I'm going to show
13 these photos to the witness and, because I would
14 prefer that he go on his own recollection as opposed
15 to discussions with counsel.
16 BY MR. SKEEN:
17 Q But if these would be of assistance to you
18 in understanding this diagram, I'd put six photos in
19 front of you --
20 A Let me tell you the nature of my question.
21 It's just a technical point since I have no
22 experience with these types of things. This is the

34

1 side view, the top is the side view of the vessel?
2 Q Right.
3 A These two bottom diagrams, is one a
4 diagram of -- the bottom one a diagram of the below
5 deck and the one above it a diagram of the above
6 deck; is that what this is?
7 Q That's what I would believe.
8 MR. BOUSE: Yes.
9 A So the -- again, I'm just -- I'm not sure
10 what some of these things mean, what some of the
11 little squares and boxes on here mean, but what
12 would you like me to do with this?
13 Q I just want you to take a moment, look at,
14 look at these pictures --
15 A Yeah.
16 Q -- of the vessel itself. First of all,
17 those six pictures of the vessel, did you take those
18 pictures or did someone take them at your request?
19 A No, I didn't take them, nor did I request
20 they be taken. I have -- I'm not sure who took
21 them, maybe Lisa, or --
22 MR. CHAKRABARTY: I believe they were

35

1 taken by --
2 A These, these are -- I -- these are not of
3 the voyage.
4 MR. CHAKRABARTY: Correct.
5 A These are after the fact. I don't know
6 who --
7 MR. CHAKRABARTY: Just for the record,
8 he's referring to the pictures you're holding in
9 your hand as opposed to these.
10 Q I'm referring to --
11 A You're referring to these picture?
12 MR. CHAKRABARTY: These pictures were
13 taken after the fact.
14 A I have no idea.
15 MR. SKEEN: Okay. Well, these were done
16 by your investigator or somebody?
17 MR. CHAKRABARTY: Somebody at the firm,
18 yes.
19 MR. SKEEN: Let me mark just the
20 photocopies of them so we'll know what we're talking
21 about as the next exhibit number, the six pictures
22 of the boat without the people on it. These were

36

1 not taken the day of event.
2 (Exhibit No. 2 was marked for
3 identification and was retained by Mr. Skeen.)
4 BY MR. SKEEN:
5 Q Now, when I originally asked the question,
6 it was before I was given these pictures, so my
7 purpose in giving you the diagram was for you to
8 designate on it where everyone was sitting and
9 where, where all your group were located during the
10 course of the trip. And since you've given me these
11 pictures that, they probably describe it a little
12 better. But just so we're clear, can you draw on
13 this diagram that I've given you the areas of the
14 boat, and directing your attention to the deck
15 level, the second one up --
16 A Yeah.
17 Q -- the areas of the boat where your group
18 was, you know, located?
19 A Yeah. Of course people moved around
20 during the voyage --
21 Q Okay.
22 A -- so -- I don't think anybody, to my

<p style="text-align: right;">37</p> <p>1 knowledge nobody was in one place the whole time, 2 but the -- there were people along here 3 (indicating). I'm pointing to the, I guess it's the 4 starboard, right starboard side of the boat -- 5 Q Right. 6 A -- along -- on the -- along the top, the 7 roof of the, above the galley I guess is what you 8 would call it. 9 Q Right. 10 A It's kind of a relatively flat area on the 11 side there. And similarly on the other side of the, 12 on the, let's say the left side of the boat when 13 you're facing forward, right and left side. So 14 people would have kind of seated themselves on that 15 galley roof. And it was convenient because you 16 could just put your food down. There were really no 17 tables or anything to put your food down. 18 Q Okay. 19 A And then there were people that were 20 seated in what I'll call the rear of the vessel, 21 this cockpit area between the galley and the wheel, 22 the steering wheel. People were kind of just --</p>	<p style="text-align: right;">39</p> <p>1 A Yeah. I would -- again, I'm not sure 2 what -- if these are -- are these the steps coming 3 up and is this the entrance to the -- 4 MR. CHAKRABARTY: Yeah, I mean -- 5 THE WITNESS: I'm just not sure what these 6 lines mean. 7 MR. CHAKRABARTY: If you're not sure -- 8 Q Well -- 9 A I can tell you where I was, but what I 10 don't know is if that's what this is. It looks 11 like -- 12 Q May I see them again? Maybe -- 13 A If this is the opening -- 14 Q I believe it is, yeah. 15 MR. CHAKRABARTY: Well -- 16 Q In other words, here is -- 17 A Just -- 18 Q Look at that picture. Is that a view that 19 will assist you in locating where you were? 20 A Yeah. Like I said, I know exactly where I 21 was. My only question is how that correlates to 22 what this chart is showing.</p>
<p style="text-align: right;">38</p> <p>1 there was a little, some free area to walk around in 2 there, and people were seated or standing or kind of 3 milling around in that area. 4 I recall -- I don't recall anybody -- 5 there may have been some people that went forward of 6 the galley roof area as it's shown on this design, 7 but my recollection was that there really was nobody 8 in the -- there were -- other than crew members. I 9 mean there may have been a couple of people that 10 went up there, but basically everybody was behind, 11 you know, from -- they did not really go in front of 12 the roof of the galley to the front of the boat. 13 Q Okay. Were they told not to do that? 14 A No. I just think it was an awkward -- they 15 may have been, I don't recall. But it was an 16 awkward area. It wasn't -- with the vessel moving, 17 I don't think it was a place people felt secure. 18 Q Okay. Now, directing your attention to 19 the time when you heard this, you were coming up out 20 of the galley and you heard this bang or whatever, 21 can you mark on that chart with a pen where you were 22 at the time that you heard this report or noise?</p>	<p style="text-align: right;">40</p> <p>1 Like I said, I had just come out of this 2 entrance, which assuming this is the, the 3 entryway -- 4 MR. CHAKRABARTY: Before you -- I'm just 5 going to note, note an objection as to the fact that 6 it's not -- he's not a draftsman, he's not familiar 7 with drafting instruments and has already stated for 8 the record his inability to identify clearly on this 9 depiction of the ship. I mean I'll let him make 10 notations but I just note that for the record. 11 MR. SKEEN: Okay. 12 A So assuming this square in the middle is a 13 the entryway above the roof of the galley, I would 14 have just come out and it would have been somewhere 15 in this area right here, I would guess (indicating). 16 Well, it would have been -- I would have to say 17 somewhere in front because I'd just come up -- 18 whether it was on the right side or the left side of 19 the, where the stairs were, it would be someplace 20 right in front of there and kind of with an 21 orientation this way. My recollection was it was 22 kind of shoulder to the side like that when I came</p>

<p style="text-align: right;">41</p> <p>1 up, and that's where I was, right about here --</p> <p>2 Q Okay.</p> <p>3 A -- I would guess, somewhere in there.</p> <p>4 Q Why don't you just draw an arrow to that</p> <p>5 and put JL.</p> <p>6 A I'm going to put it right here because</p> <p>7 it's right at the top of the steps. JL, okay. I</p> <p>8 think I've just messed up your chart.</p> <p>9 Q That's okay. We have some more. Where</p> <p>10 was the -- well, first of all, I guess you later</p> <p>11 found out that, what was the object that made the</p> <p>12 noise that you heard?</p> <p>13 A I don't know what it was to tell you the</p> <p>14 truth, but it was in the shape, I think it was in</p> <p>15 the shape of a little cannon. And the Answers</p> <p>16 called it a signal device. I don't know if it's</p> <p>17 like a starter's gun or what it is, or some sort of</p> <p>18 a safety-related instrument, but it was, it was over</p> <p>19 here someplace in this area over here. I can't say</p> <p>20 for sure because frankly, I wasn't aware of it</p> <p>21 beforehand. I wasn't aware of the device before. I</p> <p>22 had not seen it before. I don't think it was there</p>	<p style="text-align: right;">43</p> <p>1 (indicating).</p> <p>2 Q Okay. Can you draw a circle?</p> <p>3 A Somewhere in this area here.</p> <p>4 Q And put an arrow to that circle, and let's</p> <p>5 see, what are we going to call it? Cannon or</p> <p>6 whatever, whatever you want to call it.</p> <p>7 A (Complying.)</p> <p>8 Q Okay. Now, to the best of your</p> <p>9 recollection, where was the nearest person to you at</p> <p>10 the time you heard this bang?</p> <p>11 A I believe that -- I don't have a specific</p> <p>12 recollection of that to be frank, so there were --</p> <p>13 there were people in front of me as I was exiting</p> <p>14 the galley area.</p> <p>15 Q So that would be --</p> <p>16 A So I don't know. I don't know who else</p> <p>17 was around to my left or behind me or sitting on the</p> <p>18 roof of the galley. There were some people in the</p> <p>19 cockpit area but I don't recall who or specifically</p> <p>20 where they were located. And then who else may have</p> <p>21 been seated where, I can't say for sure. I really</p> <p>22 wasn't focused on that at all.</p>
<p style="text-align: right;">42</p> <p>1 before, to tell you the truth, because I walked past</p> <p>2 there. But it was over here on the, as I'm face --</p> <p>3 as I'm facing the rear of the vessel, it would be on</p> <p>4 my left side.</p> <p>5 Q Okay. All right. On the starboard side</p> <p>6 would you draw a circle in the general area where</p> <p>7 you observed the device?</p> <p>8 MR. CHAKRABARTY: Again, I'd just object</p> <p>9 for the record. I think he said that he had not</p> <p>10 seen it previous to --</p> <p>11 MR. SKEEN: I'm asking when he first</p> <p>12 noticed it.</p> <p>13 Q Which was your testimony is you didn't</p> <p>14 notice it until after you heard the bang?</p> <p>15 A (Nods head.)</p> <p>16 Q My question --</p> <p>17 A Right.</p> <p>18 Q -- would you draw a circle in the area</p> <p>19 where you first noticed the device.</p> <p>20 A I believe there was a little -- I was a</p> <p>21 little disrupted at that point because of the impact</p> <p>22 of it, that it was somewhere in this area here</p>	<p style="text-align: right;">44</p> <p>1 Q Now, how long would you estimate you were</p> <p>2 down below before you came back out and heard the</p> <p>3 bang?</p> <p>4 A I would guess it may have been five or ten</p> <p>5 minutes, something of that order. What I really</p> <p>6 don't recall specifically is if there was anybody</p> <p>7 else down there or not, if I was speaking to anybody</p> <p>8 or not. But I would guess five or ten minutes, but</p> <p>9 I don't have a really precise recollection of that.</p> <p>10 Q When you were down there before you came</p> <p>11 up and heard the bang was there any crew person down</p> <p>12 below or any catering employee or anybody --</p> <p>13 A Again, there may have been, I just don't</p> <p>14 recall. I can't be sure. I know that there were</p> <p>15 crew, the crew people were the catering people, I</p> <p>16 think they were really one in the same if I'm not</p> <p>17 mistaken. But I know during the course of the</p> <p>18 voyage they were up and down, so it's possible, but</p> <p>19 I just don't recall.</p> <p>20 Q Now, after you heard the bang, did you</p> <p>21 lose your hearing right at that point in time?</p> <p>22 A Yes, the -- what happened was, I mean it</p>

<p style="text-align: right;">45</p> <p>1 was, it was kind of a shock when I heard this</p> <p>2 loud -- as one might expect when you hear a very</p> <p>3 loud sound that you're not anticipating. And I</p> <p>4 immediately heard a -- I hurt. It was a pain caused</p> <p>5 by kind of a concussion-type pain, and my hearing</p> <p>6 was muffled and there was like a sound, a ringing in</p> <p>7 my ear that all started really at, just with the</p> <p>8 explosion.</p> <p>9 Q And did you say anything to anyone about</p> <p>10 this concussion-type pain that you experienced?</p> <p>11 A You mean when it happened?</p> <p>12 Q Yeah.</p> <p>13 A Yeah. My recollection is that I spoke to</p> <p>14 Lisa Henshaw and said that, you know, I can't hear,</p> <p>15 or my -- I'm hearing ringing in my ears from that</p> <p>16 loud blast. It would have been -- I'm not sure if</p> <p>17 she was standing in front of me, but it would have</p> <p>18 been shortly after it occurred.</p> <p>19 Q Was it more your left ear than your right</p> <p>20 ear or were they both the same?</p> <p>21 A The right ear was ringing also and I had</p> <p>22 like a muffled sound. It was like somebody had</p>	<p style="text-align: right;">47</p> <p>1 Q Did you say anything to any member of the</p> <p>2 crew concerning what had happened?</p> <p>3 A Not that I recall.</p> <p>4 Q You didn't talk to the Captain about it at</p> <p>5 any time that day?</p> <p>6 A No, no, I didn't. It didn't occur to me</p> <p>7 that I should.</p> <p>8 Q Why didn't it occur to you that you</p> <p>9 should?</p> <p>10 A Well, I had mentioned it to Lisa who was</p> <p>11 the person who organized the thing. And frankly, I</p> <p>12 wasn't -- it didn't occur to me that it was anything</p> <p>13 more than I was having some ringing in my ears and</p> <p>14 muffled and, you know, it would go away in a couple</p> <p>15 of hours or whatever. And I just didn't -- it just</p> <p>16 didn't occur to me that it was any big deal. It</p> <p>17 just didn't occur to me.</p> <p>18 Q Did you at any time hear any of the crew</p> <p>19 members warning people that they were about to shoot</p> <p>20 off this device?</p> <p>21 A No.</p> <p>22 Q Did any one of your group tell you that</p>
<p style="text-align: right;">46</p> <p>1 stuffed cotton in both my ears. I couldn't hear</p> <p>2 anything. I should say I could hear something but</p> <p>3 it was very, very muffled. So -- I'd never</p> <p>4 experienced anything like that, so I -- but -- it</p> <p>5 was both ears, but clearly more the left ear where I</p> <p>6 was feeling the pain.</p> <p>7 Q Aside from Lisa Henshaw did you say</p> <p>8 anything to anyone else from your group?</p> <p>9 A I'm sure I -- I'm sure just in the course</p> <p>10 of sitting in the, on the vessel I'm sure I</p> <p>11 mentioned it possibly to one of Mark -- possibly</p> <p>12 Mark Atwood or Don Kassilke or one of their Don's</p> <p>13 wife. I don't recall. It's possible. I'm sure,</p> <p>14 because I was sitting there feeling very</p> <p>15 uncomfortable because I was trying to have</p> <p>16 conversations but I couldn't really hear entirely</p> <p>17 what people were saying to me. So by way of</p> <p>18 explanation, I was saying, I think I said, I'm</p> <p>19 having some problems. But I don't recall</p> <p>20 specifically -- Lisa I remember because -- but other</p> <p>21 than that, I don't have a specific recollection</p> <p>22 other than what I mentioned.</p>	<p style="text-align: right;">48</p> <p>1 they had given such warnings while you were down in</p> <p>2 the galley --</p> <p>3 A No.</p> <p>4 Q -- after this took place?</p> <p>5 A No.</p> <p>6 Q Have you ever talked to any members of</p> <p>7 your group as to whether there was a warning given</p> <p>8 that the device would be used?</p> <p>9 A Yes.</p> <p>10 Q And who did you talk to about that?</p> <p>11 A Lisa.</p> <p>12 Q Okay.</p> <p>13 A Lisa Henshaw and Don Kassilke and Marc</p> <p>14 Fink, as I recall.</p> <p>15 Q Okay. And when did those conversations</p> <p>16 take place with Lisa Henshaw?</p> <p>17 A It was after, after the accident and also</p> <p>18 recently, just to ask if, what she recalled.</p> <p>19 Q And what did you ask her and what did she</p> <p>20 say to you?</p> <p>21 A I said, did you -- was there a warning</p> <p>22 given? Do you remember the warning that was given,</p>

<p style="text-align: right;">49</p> <p>1 and what was it?</p> <p>2 Q And what was her response?</p> <p>3 A That there was a warning. There was a,</p> <p>4 one of the crew members gave a warning and said</p> <p>5 that, that they were going to shoot off this device</p> <p>6 and people might want to move away and they might</p> <p>7 want to cover their ears. I think that was her --</p> <p>8 Q And how about your conversation with Don</p> <p>9 Kassilke?</p> <p>10 A He had a vague recollection that there may</p> <p>11 have been some kind of warning but nothing about</p> <p>12 covering the ears or anything of that sort.</p> <p>13 Q And how about your conversation with Marc</p> <p>14 Fink on the subject?</p> <p>15 A He had no recollection of any warning.</p> <p>16 Q Now, Lisa Henshaw's recollection was that</p> <p>17 there was this warning given and to cover your ears</p> <p>18 before -- sometime during the trip and before the</p> <p>19 gun was --</p> <p>20 A No, just immediately before.</p> <p>21 Q Just immediately before?</p> <p>22 A It was just immediately before. As they</p>	<p style="text-align: right;">51</p> <p>1 Q Let me suggest some analogies, maybe. A</p> <p>2 firecracker, a cherry bomb? Do you know what a</p> <p>3 cherry bomb sounds like?</p> <p>4 A A cherry bomb is --</p> <p>5 Q A form of a firecracker.</p> <p>6 A -- heavier form of a firecracker.</p> <p>7 Q They didn't have cherry bombs in New</p> <p>8 Jersey?</p> <p>9 A Yeah, they did. Is it a larger one, is</p> <p>10 that the implication of a cherry bomb?</p> <p>11 Q I think it is.</p> <p>12 A I think it is, too.</p> <p>13 Yeah, something -- a very loud -- I guess</p> <p>14 a very loud version of that. Firecracker wouldn't</p> <p>15 capture it because a firecracker -- it's been a lot</p> <p>16 of years since I've listened to -- been close to a</p> <p>17 firecracker, but it was a very, very loud sound and</p> <p>18 very immediate. And so I would say -- if a</p> <p>19 firecracker or cherry bomb is a little explosive</p> <p>20 device, this would have been a much bigger sound</p> <p>21 than that.</p> <p>22 Q Than either a firecracker or a cherry</p>
<p style="text-align: right;">50</p> <p>1 were about to shoot it off, as -- I don't want to</p> <p>2 characterize her recollection because I didn't get</p> <p>3 into any detail. I just really asked what she</p> <p>4 remembered. But it was only before the -- as I</p> <p>5 understood what she told me, it was only immediately</p> <p>6 before the shooting off of this thing.</p> <p>7 Q And do you recall her saying where on the</p> <p>8 boat she was when she received that warning or heard</p> <p>9 that?</p> <p>10 A I didn't ask her.</p> <p>11 Q Did anyone else in your group ever</p> <p>12 complain about the noise or any of the aftereffects</p> <p>13 of the bang?</p> <p>14 A Not to my knowledge.</p> <p>15 Q Now, the noise that you heard, how would</p> <p>16 you describe it, I guess in terms of a sound, the</p> <p>17 noise that you heard?</p> <p>18 A I guess -- it's a little difficult for me</p> <p>19 to describe it because I don't really have any</p> <p>20 personal experience with firearms and that sort of,</p> <p>21 or explosives or anything like that, but it sounded</p> <p>22 like an explosion.</p>	<p style="text-align: right;">52</p> <p>1 bomb?</p> <p>2 A Yeah. At least it sounded that way to me.</p> <p>3 Q How about a backfiring automobile, louder?</p> <p>4 A I think louder, much louder than that.</p> <p>5 Oh, I guess you could have some large trucks that</p> <p>6 make some pretty loud sounds but it would be, yes,</p> <p>7 louder than that.</p> <p>8 Q Now, when did you first, relative to after</p> <p>9 that day -- I gather you thought it would go away?</p> <p>10 A Yes.</p> <p>11 Q And did it go away or become less severe</p> <p>12 for the remainder of the day?</p> <p>13 A Well, no. The -- the -- my recollection</p> <p>14 was that, I think I took a couple of aspirin when I</p> <p>15 got home, but other than that it -- over the next</p> <p>16 few days I continued to have a ringing, but it was,</p> <p>17 it was moderated a little bit. The pain was</p> <p>18 moderated a little bit, but it was still painful,</p> <p>19 and the hearing was still a problem. I couldn't</p> <p>20 hear in my left ear and was having trouble hearing</p> <p>21 in my right ear. So it continued afterwards, but it</p> <p>22 was not, certainly it was not as intense as it was</p>

<p style="text-align: right;">53</p> <p>1 right after the accident, but still, still very much</p> <p>2 there.</p> <p>3 Q Did there come a time when you sought some</p> <p>4 medical attention concerning that?</p> <p>5 A Yeah. I really wasn't quite sure what to</p> <p>6 make of this thing because as I said, I just assumed</p> <p>7 that it would just go away after the initial shock</p> <p>8 of it. If it -- after it didn't after a couple of</p> <p>9 days I called my internist, general practitioner guy</p> <p>10 named Tom Sachs and, maybe three or four days later,</p> <p>11 I guess, and --</p> <p>12 (Interruption.)</p> <p>13 A -- and asked him what I thought -- what he</p> <p>14 thought I should do. And he, he was concerned and</p> <p>15 he said you should see a hearing specialist, an ENT</p> <p>16 person, and he suggested I contact Feldman,</p> <p>17 Oringer, et al, other names in that medical</p> <p>18 practice.</p> <p>19 Q Okay. So did he see you at that time or</p> <p>20 just talk --</p> <p>21 A No. I spoke to him on the phone.</p> <p>22 Q Okay. And so did you see the Feldman</p>	<p style="text-align: right;">55</p> <p>1 He said that sometimes that has a positive effect.</p> <p>2 I got the prednisone anyway. I -- that's basically</p> <p>3 what he had said. And I believe I had a hearing</p> <p>4 test also when I was there. I -- I'm not sure if it</p> <p>5 was the first visit or the second visit, but I think</p> <p>6 it was during that first visit with the audiologist.</p> <p>7 Q Okay. Did he discuss with you any other</p> <p>8 possible contributing causes to your hearing loss</p> <p>9 such as age or something like that?</p> <p>10 A Yeah, he had, I guess he asked me if I had</p> <p>11 had any prior hearing problems, and I didn't. I</p> <p>12 didn't.</p> <p>13 Q What did you tell him in that respect,</p> <p>14 that you'd never had your hearing tested before?</p> <p>15 A I, I recall that I, I had had my hearing</p> <p>16 tested once before. And to tell you the truth, it</p> <p>17 was so many years ago that I couldn't remember</p> <p>18 the -- who it was who did the testing. But to</p> <p>19 the -- I have a -- two recollections, two specific</p> <p>20 recollections, or three specific recollections about</p> <p>21 the hearing test. One was it was a doctor in</p> <p>22 Washington whose office was on K Street, and I</p>
<p style="text-align: right;">54</p> <p>1 group?</p> <p>2 A Yeah. The next -- I made an appointment,</p> <p>3 and I guess it was the next week I saw Doctor</p> <p>4 Feldman, and he, he examined me and -- well, he</p> <p>5 examined me.</p> <p>6 Q And what did he conclude, as you</p> <p>7 understand it?</p> <p>8 A As I understand it he basically said that</p> <p>9 it was, that I'd suffered a hearing loss as a result</p> <p>10 of this loud noise, that the, I think he referred to</p> <p>11 it as tinnitus, I think that's the word he used.</p> <p>12 Tinnitus was this ringing sound I had in my ear, and</p> <p>13 that the pain was, you know, might subside but that</p> <p>14 it might not. In fact when people have a hearing</p> <p>15 loss, it's not uncommon to be sensitive to sounds</p> <p>16 and for it to hurt. He said that it -- he couldn't</p> <p>17 know for sure it was going to be a permanent hearing</p> <p>18 loss. Sometimes people did bounce back and they</p> <p>19 recover their hearing and this would go away, and</p> <p>20 other times not. And it really depends if there was</p> <p>21 permanent nerve damage as I recall, neural nerve</p> <p>22 damage or not, and he prescribed some prednisone.</p>	<p style="text-align: right;">56</p> <p>1 believe it was in conjunction with an extended head</p> <p>2 cold that I was having and I was having trouble</p> <p>3 hearing. And he sat me down and checked me and put</p> <p>4 some earphones on me and he did these little beeps</p> <p>5 that they do in the earphones.</p> <p>6 Q Right.</p> <p>7 A I was not in a separate sound chamber. I</p> <p>8 remember he did it in the chair. I'm guessing this</p> <p>9 is fifteen years ago or so, and there was no</p> <p>10 indication of any problem. He checked a number of</p> <p>11 things, and that was the end of it, and I don't</p> <p>12 think I ever saw that person again.</p> <p>13 Q Do you remember the diagnosis of that</p> <p>14 doctor? Was it some sort of congestion in the ear</p> <p>15 canal that was giving you problems?</p> <p>16 A That's my recollection. It's kind of</p> <p>17 vague. I know that there was no -- whatever the</p> <p>18 issue was, it had nothing to do with hearing. It</p> <p>19 was really a, probably just the congestion issue.</p> <p>20 And I never had occasion to really follow-up or</p> <p>21 check my hearing again after that.</p> <p>22 Q Had you had a congestion problem over</p>

<p>57</p> <p>1 time? Is that something --</p> <p>2 A Not really, no.</p> <p>3 Q Do you have any family history of -- are</p> <p>4 your parents still living?</p> <p>5 A My mother, my mother is alive, my father</p> <p>6 is not.</p> <p>7 Q Do you have any history of hearing loss in</p> <p>8 your family that you know of?</p> <p>9 A Well, my mother's hearing is fine. The --</p> <p>10 in the last year of my father's life he was, he</p> <p>11 was -- he died about twenty years ago. And in the</p> <p>12 last year of his life, he had lost his kidneys, he</p> <p>13 was on dialysis, and he had gout and just a, a</p> <p>14 variety of horrendous, ultimately fatal ailments.</p> <p>15 And the only thing I remember is sometimes he would</p> <p>16 at that point turn the television up a bit. I think</p> <p>17 frankly he was, the dialysis at that time was just</p> <p>18 very different than it is today. It was very</p> <p>19 traumatizing. And I -- that's about the closest I</p> <p>20 can come to anybody with a hearing problem.</p> <p>21 Q How old was he at the time?</p> <p>22 A 59.</p>	<p>59</p> <p>1 or --</p> <p>2 A Not at that point, but thereafter I got a</p> <p>3 hearing aid. I tried one hearing aid, I don't</p> <p>4 recall the type of hearing aid. It was a very high-</p> <p>5 tech, digital hearing aid, and it was -- the cure</p> <p>6 was worse than the disease. I mean it was really</p> <p>7 horrendous in terms of just, I guess I've gotten an</p> <p>8 education on the, on hearing aids but it's a</p> <p>9 complicated business trying to find the right</p> <p>10 hearing aid, and some people never do. And</p> <p>11 basically the problem with the initial hearing aid</p> <p>12 was that it amplified internal sounds, like chewing</p> <p>13 and other internal sounds to a great degree and also</p> <p>14 amplified a lot of ambient noise. So I was getting</p> <p>15 a lot of constant noise, so you really couldn't even</p> <p>16 hear yourself think at times, which made it in terms</p> <p>17 of just emotionally, just hearing noise constantly</p> <p>18 is disrupting, agitating, but it also frequently</p> <p>19 actually interfered and made hearing worse than</p> <p>20 better. So I returned that hearing aid.</p> <p>21 Q So you're not wearing any --</p> <p>22 A I'm wearing a hearing aid now actually.</p>
<p>58</p> <p>1 Q 59?</p> <p>2 A Uh-huh.</p> <p>3 Q Okay. So you saw Doctor Feldman. Did he</p> <p>4 offer you any treatment at that point after your</p> <p>5 first --</p> <p>6 A Doctor Feldman?</p> <p>7 Q Doctor Feldman, yeah.</p> <p>8 A He prescribed prednisone.</p> <p>9 Q Aside from the prednisone?</p> <p>10 A No, he suggested prednisone. He suggested</p> <p>11 that I be aware, that I be very careful about</p> <p>12 exposing myself to loud noise situations, suggested</p> <p>13 that I, you know, use earplugs, those cushioned</p> <p>14 earplugs when appropriate, as I recall. But beyond</p> <p>15 that, I think the indication he gave was that if it</p> <p>16 was nerve damage, which is what he thought it might</p> <p>17 be, there was no surgery or treatment or medication</p> <p>18 that could remedy that problem. The only</p> <p>19 possibility was to get a hearing aid which would</p> <p>20 assist a little bit with the hearing, or assist to</p> <p>21 some extent with the hearing.</p> <p>22 Q Did you get a hearing aid at that point,</p>	<p>60</p> <p>1 Q You are?</p> <p>2 A Yes. I went to another audiologist,</p> <p>3 Doctor Israel. I wanted to get another opinion, was</p> <p>4 there anything I could do? This is a bit later. He</p> <p>5 was, he basically had -- he tested me, and I don't</p> <p>6 recall the dates but he had tested me, had the same</p> <p>7 diagnosis. I explained the problem I had with</p> <p>8 prior, the prior hearing aid and he suggested, he</p> <p>9 said that he -- given the nature of my hearing loss,</p> <p>10 it might be difficult finding something that, that</p> <p>11 met all my needs, but he suggested a hearing aid</p> <p>12 that at least would amplify forward for people</p> <p>13 speaking to me so I would have somewhat -- and I</p> <p>14 could use it as I needed it, so I didn't have to</p> <p>15 wear it all the time. And I have, I still have that</p> <p>16 hearing aid. I use it occasionally. It's of some</p> <p>17 help, but limited.</p> <p>18 And then recently I decided to try again,</p> <p>19 and -- another hearing aid, and I'm wearing that</p> <p>20 hearing aid now. And it's a little bit better, but</p> <p>21 it's got a lot of the same problems.</p> <p>22 Q And is that one that helps you hear</p>